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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ERIC E., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC E.,

Defendant and Appellant.

G031320

(Super. Ct. No. DL012477)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Joy W. Markman, Judge. Affirmed.

Ellen M. Matsumoto, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Peter Quon, Jr., and Marvin E. Mizell, Deputy Attorneys General, for Plaintiff and Respondent.

After defendant's motion to suppress was denied, he pleaded guilty to unlawfully carrying a switchblade knife. He was declared a ward of the court and placed on probation. On appeal, defendant argues the knife should have been suppressed as the result of an illegal detention and search. We affirm.

FACTS

The Traffic Stop

Anaheim Police Officer Steven Davis (Davis) was on patrol when he observed an older model Cadillac driven by defendant's uncle traveling about 50 miles per hour in a 40 miles per hour zone. Davis initiated a traffic stop because of the speed violation, and because the identification tags on the rear license plate were faded and unreadable.

The vehicle pulled into the parking lot of a strip mall and stopped. Anaheim Police Officer Jason Stinson (Stinson) was also in the vicinity, so he pulled his patrol car into the parking lot behind Davis's patrol car to provide "cover" for Davis. Davis approached the driver's side of the car, and Stinson served as back-up for Davis by standing behind the passenger door where defendant was seated as a passenger.

Davis asked the driver for identification, license, insurance and registration. While these documents were being produced, Davis asked the driver if he was on parole. The driver said yes. Davis then asked the driver to step out of the vehicle to question him further about his parole status. The driver complied, gave Davis his parole officer's number, and told Davis he was on parole for possessing stolen property. While Davis was questioning the driver, Stinson remained standing behind the front passenger door, and spoke with defendant about general matters unrelated to the traffic stop.

While questioning the driver, Davis noticed an expensive jacket on a hanger, with the price tag still attached, carelessly thrown on the back seat. This appeared “odd” to Davis, so he asked the driver for permission to search the car in order to retrieve the jacket. When Davis asked the driver where he obtained the jacket, the driver seemed nervous and could not recall where he purchased it. Davis came to the conclusion the jacket had been stolen because the driver could not explain where he bought it and he did not have a receipt. Davis called the driver’s parole officer. The parole officer told Davis to arrest the driver for a parole violation.

Defendant is Searched

Davis told Stinson, who was still standing behind the front passenger door, that the driver was under arrest for a parole violation. Stinson then asked defendant to step out of the car so Davis could search it for contraband, narcotics, or weapons, and because the car might be towed. When defendant stepped out of the car Stinson asked him if he had any weapons. Defendant replied, “no.” For the protection of both officers, Stinson asked defendant if he could search him. Defendant gave Stinson consent to do so.

Stinson pat-searched defendant and then asked him to remove his shoes. This additional request was based on Stinson’s experience that individuals he encounters often hide weapons in their shoes. After some initial hesitation, defendant complied with the request. When defendant removed his left shoe, Stinson saw a “butterfly type knife” inside the shoe. Defendant told Stinson he carried the knife for protection because he was afraid of gangs. Stinson arrested defendant. Twenty-three minutes had elapsed from the time the car was stopped until the time defendant was arrested.

Defendant testified he did not feel free to leave while sitting in the car because Stinson was standing about five feet away from the passenger car door and

Stinson was “looking” at him. Defendant denied Stinson asked permission before conducting the pat-search. Instead, according to defendant, as soon as he got out of the car Stinson asked him if he had any weapons, and immediately began to pat him down, not asking for permission until the pat-search was partly completed. Defendant also testified he did not feel free to leave after the pat-search because Stinson said he could not leave until they were “done.”

DISCUSSION

After hearing testimony, the court denied defendant’s Welfare and Institutions Code section 700.1, motion to suppress. In its ruling, the court found: (1) Davis’s traffic stop was justified because there was reasonable suspicion the driver of the vehicle violated the Vehicle Code; (2) under *Maryland v. Wilson* (1997) 519 U.S. 408, the Fourth Amendment of the United States Constitution was not violated when Stinson asked defendant to step out of the vehicle for the purpose of officer safety; (3) defendant consented to the pat-search and shoe search; and (4) defendant was never detained during the entire encounter with Stinson.

Defendant contends: (1) the court erred when it found defendant was never detained; (2) even if defendant was not detained at the time of the initial traffic stop, the investigation and search of defendant after he stepped out of the vehicle prolonged the encounter thereby making it an unlawful detention; and (3) defendant’s consent to the search was invalid, having been obtained as a result of the unlawful detention.

Standard of Review

In denying the motion to suppress, the court found Stinson’s version of the facts more credible than defendant’s. The power to judge the credibility of witnesses,

resolve conflicts in testimony, weigh evidence, and draw factual findings is vested in the trial court. “On review of denial of a suppression motion, we defer to the trial court’s factual findings where supported by substantial evidence, but exercise independent judgment to determine whether, on the facts found, the search was reasonable under Fourth Amendment standards.” (*People v. Russell* (2000) 81 Cal.App.4th 96, 102.)

Defendant Was Not Detained During the Traffic Stop

The stop of the vehicle in which defendant was a passenger was based upon probable cause a Vehicle Code violation had occurred, i.e., the vehicle was traveling at a speed in excess of the posted speed limit. The stop was proper. “As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” (*Whren v. U.S.* (1996) 517 U.S. 806, 810.) The traffic stop becomes an investigatory detention, and the officer is permitted to detain the motorist for the period of time necessary to discharge the duties related to the traffic stop. (*People v. Brown* (1998) 62 Cal.App.4th 493, 496-497.)

This division has held, however, that a detention of the driver is not necessarily a detention of passengers in the car. A traffic stop does not become a detention of the passenger unless “the officer physically restrains him or her or initiates a show of authority to which a reasonable innocent person in the passenger’s position would feel compelled to submit, and to which the passenger actually does submit.” (*People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1364; accord, *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1374; *People v. Fisher* (1995) 38 Cal.App.4th 338, 344; contra, *People v. Bell* (1996) 43 Cal.App.4th 754, 765; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1460.)

Here, Stinson’s act of standing behind the passenger door was not a show of authority constituting a detention. While Davis was engaged with the driver, there was

no evidence Stinson used a commanding tone of voice, blocked the door, displayed a weapon, or did anything that would cause a reasonable person to believe he was not free to leave. (*In re Manuel G.* (1997) 16 Cal. 4th 805, 821.) Defendant contends the presence of two officers distinguishes the instant case from *People v. Cartwright, supra*, 72 Cal.App.4th 1362. But there is no evidence suggesting the mere presence of the second officer constituted a show of authority as to defendant. Stinson stationed himself to ensure Davis's protection while he was occupied with the driver. By itself, this did not constitute a show of authority as to defendant.

Stinson and defendant were never in confrontation. They merely spoke about things unrelated to the detention of the driver, and the issue of defendant's freedom to leave never came up. Although defendant testified he felt he could not ask to leave because Stinson was standing about five feet away from him, and was "looking" at him, the defendant's "subjective belief [is] irrelevant in assessing whether a seizure triggering a Fourth Amendment scrutiny has occurred." (*In re Manuel G., supra*, 16 Cal.4th at p. 821.) "The focus we must maintain is on what the officer actually said and did." (*People v. Cartwright, supra*, 72 Cal.App.4th at p. 1371.) "[T]here is no indication that defendant was not free to go about his business when the car was first stopped and while [the officer] was occupied with the car's driver. Defendant made no attempt to depart and [the officer] exercised no control over defendant prior to asking him to step out of the car." (*People v. Fisher, supra*, 38 Cal.App.4th at pp. 343-344.)

We need not decide whether defendant's submission to Stinson's request to step out of the vehicle constituted a detention triggering Fourth Amendment analysis. Even if it was a detention, it was reasonable and thus lawful. (*Maryland v. Wilson, supra*, 519 U.S. 408.) Whether defendant was commanded or merely requested to step out matters not. Either way, the act was reasonable and necessary to facilitate a safe search of the vehicle incident to the driver's arrest.

Officer Stinson's Search of Defendant Did Not Unlawfully Prolong the Detention

Defendant also contends Stinson's pat-search and search of his shoes unlawfully prolonged the detention, thus violating the Fourth Amendment. We disagree.

"An investigatory stop exceeds constitutional bounds when extended beyond what is reasonably necessary under the circumstances that made its initiation permissible. [Citation.] Circumstances which develop during a detention may provide reasonable suspicion to prolong the detention. [Citation.] There is no set time limit for a permissible investigative stop; the question is whether the police diligently pursued a means of investigation reasonably designed to confirm or dispel their suspicions quickly." (*People v. Russell, supra*, 81 Cal.App.4th at pp. 101-102.)

Here, immediately after defendant got out of the car, Stinson asked if he had any weapons, and if he could search him. These two questions did not unduly prolong any detention. Actually, the request to get out of the car was the earliest moment a detention could be found even under defendant's view of the evidence. Further, these questions were a necessary part of the vehicle search yet to be conducted by Davis to ensure it could be done safely. After Stinson performed the pat-search, the search of defendant's shoes did not further prolong the encounter because Stinson asked defendant to remove his shoes immediately after the pat-search was performed.

Defendant's Consent To the Search of His Body and Shoes Was Valid

Lastly, defendant contends his consent to Stinson's search was invalid because it was given during his unlawful detention. Because there was no unlawful detention, his consent to search was valid. (*People v. Meredith* (1992) 11 Cal.App.4th 1548, 1560-1561 [consent is an exception to a warrantless search under the Fourth Amendment].)

DISPOSITION

The court did not err in denying the motion to suppress. We affirm the judgment.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.